

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHAEL MOURNING,
Petitioner,

v.

COMMISSIONER OF CORRECTION,
Respondent.

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Case No. 3:14cv845 (VAB)

DECEMBER 28, 2015

RULING ON RESPONDENT'S MOTION TO DISMISS [ECF NO. 13]
AND ORDER TO SHOW CAUSE

Petitioner, Michael Mourning, filed this action under 28 U.S.C. § 2254, challenging his conviction for sale of narcotics, while he was serving the probationary period of his sentence. Initially, Mr. Mourning included four grounds for relief in his original Petition. Petition, ECF No. 1. He then moved to amend the Petition, which the Court allowed. Order, ECF No. 8. The Amended Petition he filed contained one ground for relief only. Am. Petition, ECF No. 9.

Respondent, the Commissioner of Correction, moved to dismiss the case, Mot. to Dismiss, ECF No. 13, assuming that the Amended Petition was an addendum to the original Petition. However, as explained in the Court's prior Order, ECF No. 24, an amended petition replaces the original petition in its entirety. Accordingly, the Court ordered Mr. Mourning to file another amended petition setting forth all grounds upon which he seeks to challenge his conviction in a single document. Order, ECF No. 24. In response, he filed a second Amended Petition, ECF No. 26.

Usually, the filing of an amended petition moots any previously filed motion to dismiss addressed to a prior petition. *See Kolari v. New York-Presbyterian Hosp.*, 455 F.3d 118, 120 n.2

(2d Cir. 2006) (noting that the filing of an amended complaint after defendants filed a motion to dismiss mooted that motion to dismiss); *Byng v. Campbell*, Civil Action No. 9:07-cv-471 (GLS/DRH), 2009 WL 152708, at *1 (N.D.N.Y. Jan. 21, 2009) (“Typically, the filing of an amended complaint following the filing of a motion to dismiss the initial complaint moots the motion to dismiss.”) (citation omitted) (adopting a Report and Recommendation). Because Mr. Mourning has filed a second Amended Petition, the Respondent’s Motion to Dismiss [ECF No. 13] addressed to a prior petition is **DENIED AS MOOT**.

The Respondent shall file a response on or before **February 1, 2016** as to why the relief requested in the second Amended Petition for writ of habeas corpus, ECF No. 26, should not be granted.

SO ORDERED this 28th day of December 2015 at Bridgeport, Connecticut.

/s/ Victor A. Bolden
Victor A. Bolden
United States District Judge